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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

AXEL CRUZ et al.,

Defendants and Appellants.

B285598

(Los Angeles County
Super. Ct. No. BA439812)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant Axel Cruz.

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant Aron Gutierrez.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, Nima Razfar, Deputy Attorney General, for Plaintiff and Respondent.

Defendants and appellants Axel Cruz (defendant Cruz) and Aron Gutierrez (defendant Gutierrez), both admitted members of the Crazy Riders criminal street gang, were jointly tried and convicted on charges of robbery and assault. As to defendant Gutierrez, we consider whether sufficient evidence supports his convictions for assaulting two victims as either a direct perpetrator or an aider and abettor. As to defendant Cruz, we consider whether sufficient evidence supports the jury's finding that his robberies and assaults of another victim were gang-related and specifically intended to promote criminal conduct by gang members.

I. BACKGROUND

A. *Overview of the Charged Offenses and Jury Verdicts*

Defendants were charged together in an amended 12-count information alleging crimes committed against seven victims in July, August, and September 2015. The information charged defendant Gutierrez with robbing victim Edgar Arbizu (count one); assaulting victim Reynaldo Jacinto by means of force likely to produce great bodily injury (count two); robbing victim Mynor Garcia (count four); robbing victim Christian Gomez (count five); attempting to rob victim Victor Concepcion (count ten) and assaulting him by means of force likely to produce great bodily injury (count 12); and attempting to rob Concepcion's girlfriend, victim Breezy Arevalo, and assaulting her by means of force likely to produce great bodily injury (counts 13 and 18). Defendant Cruz was charged with the crimes involving victims Garcia, Gomez, Concepcion, and Arevalo, and he was also charged with twice robbing victim Gustavo Mendez and assaulting him by means of force likely to produce great bodily

injury (counts 14 through 17—each crime on two separate occasions).

The jury convicted defendant Gutierrez of all crimes against victims Arbizu, Jacinto, Garcia, Gomez, and of the charged assault offenses pertaining to victims Concepcion and Arevalo.¹ The jury convicted defendant Cruz of the crimes against victims Garcia, Gomez, and Mendez but acquitted defendant Cruz on the remainder of the charges against him. The jury further found that all of the crimes of conviction for both defendants were gang-related, i.e., that they were committed for the benefit of, in association with, or at the direction of a criminal street gang, and with the specific intent to promote, further, or assist in criminal conduct by gang members. Defendant Cruz received a 28-year prison sentence and defendant Gutierrez's sentence was 27 years and eight months.

The jury findings involving victims Concepcion, Arevalo, and Mendez are at issue in this appeal. Defendant Gutierrez challenges only his convictions for assaulting Concepcion and Arevalo, and defendant Cruz challenges only the jury's true finding on the gang allegations associated with the robberies and assaults of Mendez. We focus our discussion on the background facts that are pertinent to the issues presented for decision.

¹ The jury found defendant Gutierrez not guilty of attempting to rob Concepcion and the prosecution dismissed the charge of attempting to rob Arevalo in the interest of justice.

B. Trial Evidence of the Assaults against Arevalo and Concepcion

At approximately 8:00 p.m. on August 18, 2015, Concepcion and Arevalo were at the Los Angeles Metro Train Station at 7th and Alvarado (the Metro Station). The Metro Station is located in territory claimed by the Crazy Riders criminal street gang.

A group of individuals approached Concepcion and asked him where he was from, which he understood to be a question asking whether he was affiliated with a gang. One of the individuals in the group appeared annoyed or angered, and Concepcion and Arevalo walked away. Video surveillance cameras captured some of what next transpired, and the footage was played for the jury at trial.

Concepcion and Arevalo entered the lower-level area of the Metro Station as shown by the surveillance footage. A number of other individuals can be seen apparently giving chase. Once Concepcion and Arevalo made it to the train platform, a group of about seven men, including the person who asked Concepcion where he was from, approached and stood around him. According to Concepcion, Arevalo was several feet behind Concepcion at the time (she is not visible in the footage from video cameras on the Metro Station platform) and she “was being held by her hand” by someone in the group. The group began arguing with Concepcion, and the argument escalated into a physical attack (the group followed Concepcion out of range of the surveillance cameras such that the attack itself was not captured on video).

Concepcion estimated he was punched or hit about 40 times by members of the group, and when asked which specific individuals landed punches, Concepcion said: “If I had to say

exactly, that would be difficult, because there were a lot of people, and then the blows just started.” While being beaten, Concepcion saw one of the individuals in the group throw Arevalo to the ground and kick her. After the beating stopped, Metro Station video cameras captured several of the men (recognizable from their clothing) running out of the station.

In the immediate aftermath of the assault, Concepcion was left with redness on his face, a “large lump” on his forehead (visible in a post-assault photograph), and another injury to the back of his neck. Arevalo was crying and suffered from pain in her leg which prevented her from standing.

Not long after the assault, police investigators presented Concepcion with a six-person photographic lineup and he identified defendant Gutierrez as someone who “participat[ed] in the assault.” At trial, Concepcion reaffirmed defendant Gutierrez was among the group of individuals at the Metro Station when he was assaulted. Concepcion specifically identified defendant Gutierrez in the video footage played for the jury. Concepcion could not elaborate about the specifics of defendant Gutierrez’s role in the assault except to say that he was not the person who initially asked him where he was from, nor was he the person who held Arevalo and threw her to the floor.²

After the presentation of evidence, the trial court instructed the jury that it could convict defendant Gutierrez of assaulting Concepcion and Arevalo if it found either that defendant Gutierrez was a direct perpetrator of the assaults or

² Concepcion did testify, however, that defendant Gutierrez had been with others who on past occasions confronted Concepcion with the “where are you from” gang question.

that he aided and abetted one of the perpetrators. To convict defendant Gutierrez on an aiding and abetting theory, the court's instructions explained the jury must find defendant Gutierrez knew that the person (or persons) who personally committed the assaults intended to do so, defendant Gutierrez intended to aid and abet the perpetrator(s) in committing the assaults before or during their commission, and defendant Gutierrez's words or conduct did in fact aid and abet the perpetrator(s) in the commission of the crime.

In closing argument, defendant Gutierrez argued Concepcion did not testify that any of the people who hit him were present in the courtroom during trial. The prosecution maintained defendant Gutierrez was identifiable in the video surveillance footage as the man wearing a red shirt that was part of the group that could be seen partially encircling Concepcion. The prosecution acknowledged that "what exactly is occurring here is not 100 percent clear from the video" but argued that "what is clear is that [Concepcion] was then assaulted by these individuals, and his girlfriend . . . was assaulted" The prosecution also discussed aiding and abetting principles that would support criminal liability even if the jury concluded defendant Gutierrez did not directly commit a charged crime.

B. The Assaults and Robberies of Victim Mendez and the Street Gang Expert Testimony

On two separate occasions, defendant Cruz, an admitted member of the Crazy Riders gang, attacked and robbed Mendez near 7th and Alvarado Streets (the area where the Metro Station is located).

In the evening on July 21, 2015, Mendez was walking to the Metro Station to take the train home and defendant Cruz approached and asked Mendez if he wanted any marijuana. Mendez was texting on his phone at the time and declined, and defendant Cruz then snatched the phone out of Mendez's hand and walked away with it.

Mendez pursued defendant Cruz, demanding he return the phone. Defendant Cruz told Mendez he wanted \$60 to return the phone and Mendez gave him the money. Defendant Cruz then turned to leave with the money and the phone, and when he did, Mendez grabbed him. Defendant Cruz turned back around and punched Mendez in the face, and then, as Mendez described it, "a bunch of other people came over." Mendez estimated he was swarmed by approximately ten people who all punched and kicked him, which caused him to lose consciousness "for a little while." Paramedics eventually responded and Mendez never got his phone or \$60 back.

Almost a month later, in the evening on August 18, 2015 (the same day as the assaults on Concepcion and Arevalo), Mendez was back in the area of 7th and Alvarado to buy school clothes for his nephew. When Mendez entered a Metro Station elevator, defendant Cruz—accompanied by several other people—got on the elevator and asked "what I [i.e., Mendez] had for them this time." Mendez responded "that they were confusing me" and defendant Cruz replied by demanding Mendez's watch and the bicycle he had with him. Mendez complied, but defendant Cruz and the others began beating him up anyway, knocking him to the ground and kicking him while he was down. Defendant Cruz and the others made off with all Mendez had that day, including the school clothes he purchased for his nephew.

Los Angeles Police Department officer Tomas Perez testified as the prosecution's gang expert at trial. He explained that the 7th and Alvarado area where the crimes against Concepcion, Arevalo, and Mendez occurred is a "stronghold" for the Crazy Riders criminal street gang. Elaborating on the Crazy Riders' control of the Metro Station in particular, Officer Perez testified the gang's territory was so "stringent" that he was "hard pressed" to recall ever seeing members of rival gangs on the station platform except in instances where there had been inter-gang shootings or stabbings. Officer Perez identified the Crazy Riders' primary activities as assaults (including assaults using deadly weapons), "street robberies," extortion, drug sales, vandalism, and the sale of fraudulent identification cards.

Officer Perez also offered opinions in response to questions concerning the participants and evidence in this case. He opined both defendants were members of the Crazy Riders, relying in part on admissions they made to him to that effect. He also described how robberies and assaults committed within Crazy Riders' claimed territory would benefit the gang: "There's a couple of benefits. The first benefit is the obvious economic benefit, that any items recovered during a robbery are profit, essentially, and that profit can be used to fund the gang's lifestyle. . . . [¶] In terms of the other benefit that it provides for the gang, . . . it allows them to retain a stronghold of that area. By being in that area, committing robberies, they claim that area as theirs, which then allows them to sell drugs and sell fraudulent [identification] cards and whatever the case. [¶] . . . [¶] And then they also deter victims, witnesses, and rival gang members from lashing out against them in that area or

from infiltrating that area. So there's a fear and intimidation component to it that provides benefit to the gang."

II. DISCUSSION

Under the deferential standard that governs evidence sufficiency review of the challenged convictions and gang enhancements, we shall affirm the jury verdicts. Concepcion identified defendant Gutierrez in video footage as one of the members of the group at the Metro Station that assaulted him and his girlfriend. Concepcion also confirmed his prior photospread identification of defendant Gutierrez as someone who participated in the assault. That was an adequate basis for the jury to find he was a direct perpetrator of the assault (as to Concepcion) or, at a minimum, an aider and abettor equally liable as the direct perpetrators (as to both Concepcion and Arevalo). With regard to the gang enhancements, the jury could reasonably infer, from Mendez's testimony and Officer Perez's expert opinion, that defendant Cruz was a member of the Crazy Riders, that others participating in the beatings and robberies of Mendez in the Crazy Riders' stronghold were likewise Crazy Riders gang members, and that the assaults and robberies were committed for the benefit of the gang and with specific intent to promote criminal conduct by gang members.

A. *Standard of Review*

The same standard of review applies to sufficiency of the evidence challenges to convictions and gang enhancement true findings: we review the record "in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of

solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Westerfield* (2019) 6 Cal.5th 632, 713 [conviction]; accord, *People v. Albillar* (2010) 51 Cal.4th 47, 60 [gang enhancement] (*Albillar*); see also Evid. Code, § 411; *People v. Jones* (2013) 57 Cal.4th 899, 963-964 [testimony of a single witness suffices to support conviction unless physically impossible or inherently improbable].)

B. Substantial Evidence Supports Defendant Gutierrez’s Assault Convictions

Concepcion identified defendant Gutierrez during trial as one of the men in the group that accosted him and Arevalo on the Metro Station platform. Concepcion and a responding law enforcement officer also described the injuries he and Arevalo suffered as a result of the attack. It is undisputed, however, that Concepcion was not able to identify any particular blows landed on him by defendant Gutierrez, and Concepcion affirmatively ruled defendant Gutierrez out as the person who held Arevalo and knocked her to the ground. The question is whether that is fatal to the validity of either assault conviction. It is not.

There was adequate evidence on which a reasonable jury could find defendant Gutierrez was a direct perpetrator of the assault on Concepcion. Specifically, Concepcion’s testimony that “between all of them” he suffered about 40 blows during the attack, his identification of defendant Gutierrez as depicted in the video footage just prior to the assault, and his reaffirmation of his identification of defendant Gutierrez as someone who “participat[ed] in the assault” is enough—Concepcion was not required to give a punch-by-punch accounting of who hit him

where during the group attack. (Cf. *People v. Modiri* (2006) 39 Cal.4th 481, 496-497 [findings to justify application of a personal infliction of injury sentencing enhancement can be based on participation in a group attack even if the evidence is not clear about which particular blows the defendant inflicted].)

As to Arevalo, Concepcion ruled out defendant Gutierrez as a direct perpetrator of the assault on her, but the jury was also instructed on aiding and abetting principles. With evidence of an assault on her that ensued after a gang challenge, that was committed in the heart of Crazy Riders territory by a group of up to seven men including defendant Gutierrez (an admitted member of the Crazy Riders), and that prompted all in the group to flee the Metro Station together after the assault was over (as caught on surveillance cameras), the jury had sufficient evidence to reasonably conclude defendant Gutierrez knew of the unlawful purpose of the person who perpetrated Arevalo's assault and intended to and did help accomplish the crime by participating in the joint attack—which prevented Concepcion and Arevalo from fleeing or coming to each other's aid (even if just by calling the police).³ (*People v. Hardy* (2018) 5 Cal.5th 56, 96 [aiding and abetting liability requires knowledge of the perpetrator's unlawful purpose and intending to aid, and in fact aiding, the commission of the crime].)

³ For essentially the same reasons, the jury could also have reasonably found defendant Gutierrez liable for the assault on Concepcion on an aiding and abetting theory.

C. Substantial Evidence Supports the Jury's Gang Enhancement True Findings in Connection with the Mendez Crimes

The jury found true allegations that the assaults and robberies of Mendez, as charged against defendant Cruz, were gang-related within the meaning of Penal Code section 186.22, subdivision (b)(1). That statute authorizes increased punishment for “any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” There was substantial evidence of both statutory elements, i.e., that the assaults and robberies were committed for the benefit of the Crazy Riders and with specific intent to promote criminal conduct by gang members.

Resolution of the evidence sufficiency challenge to both elements of the gang enhancement statute ultimately reduces to two questions: Did the jury have an adequate basis to infer the others who joined defendant Cruz in assaulting Mendez were Crazy Riders gang members? And could the jury reasonably infer that people in the area of 7th and Alvarado would understand the multi-person assaults on Mendez were perpetrated by gang members? If the answer to both questions is “yes,” then under our Supreme Court’s decision in *Albillar*, the evidence in this case was sufficient. (*Albillar, supra*, 51 Cal.4th at p. 63 [citing *People v. Vazquez* (2009) 178 Cal.App.4th 347 for the proposition that expert opinion can establish a murder benefited a gang within the meaning of Penal Code section 186.22 because “violent crimes like murder elevate the status of the gang within gang culture and intimidate neighborhood residents who are, as a

result, “fearful to come forward, assist law enforcement, testify in court, or even report crimes that they’re victims of”]; see also *id.* at p. 68 “[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members”].) As we now explain, “yes” is indeed our answer to both questions.

The jury had evidence that defendant Cruz himself was an admitted member of the Crazy Riders. The jury also knew, from the evidence presented, that defendant Cruz twice assaulted Mendez in the Crazy Riders’ “stronghold,” with approximately ten other people joining defendant Cruz in the first assault and multiple people joining defendant Cruz in the second assault in the Metro Station elevator (as Mendez put it, “[t]he elevator was full of them”). The jury further knew from Officer Perez’s testimony that assaults and “street robberies” were among the Crazy Riders’ primary activities. And as to the second assault, Mendez testified defendant Cruz asked him “what I had for them this time,” which suggests not just that all those who participated in this robbery of Mendez would share in the ill-gotten proceeds, but that the earlier “them,” i.e., those who joined defendant Cruz in the first robbery, also did the same. From all this, the jury could fairly infer that the others who joined defendant Cruz to commit violent crimes in gang territory in full view of the public were fellow members of his gang.

The jury also had evidence on which it could rely to find members of the community in the area of 7th and Alvarado would understand the attacks on Mendez as “gang-related” crimes. (*Albillar, supra*, 51 Cal.4th at p. 67 [“The

enhancement . . . requires proof that the defendant commit a gang-related crime in the first prong—i.e., that the defendant be convicted of a felony committed for the benefit of, at the direction of, or in association with a criminal street gang”].) Mendez testified that a total of approximately ten people (including defendant Cruz) assaulted and robbed him in the first instance and an elevator full of people (again including defendant Cruz) robbed him in the second instance. Both attacks took place in the heart of Crazy Riders territory, and while the general public would not necessarily have Officer Perez’s specialized gang knowledge, the jury could reasonably infer that members of the community would understand the ten-on-one or elevator-full-on-one attacks were gang-related crimes. When coupled with Officer Perez’s testimony about the intimidation effect such attacks have on law-abiding citizens, the benefit gangs reap from such intimidation, and the Crazy Riders’ tight control on this “stronghold” area of their territory, the jury had an adequate basis to infer the assaults and robberies were committed for the benefit of the Crazy Riders gang.⁴

⁴ Officer Perez also offered an expert opinion that robberies committed in Crazy Riders territory provide an economic benefit to the gang because “any items recovered during a robbery are profit, essentially, and that profit can be used to fund the gang’s lifestyle.” The jury could have also reasonably relied on this economic benefit theory to find the crimes were gang-related under the circumstances here, particularly, defendant Cruz’s what-do-you-have-for-us-this-time statement. This statement reveals the crimes were committed for the collective benefit of the group—a group that we have already concluded the jury could infer was comprised of other Crazy Riders members. While Officer Perez conceded at trial that he did not have evidence that

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.

any of the stolen items were sold and the money went to the gang, we are not of the view that Penal Code section 186.22 requires a monetary tracing analysis to permit a finding of economic benefit.